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Justice as a secondary moral ideal: the British idealists and the personal ethics perspective in understanding social justice¹

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The topic of social justice is not directly associated with the British idealists. Issues about which we more habitually seek their wisdom include citizenship, the role of the state, the common good, moral character or self-realisation. With respect to the post-Rawlsian dichotomy ‘justice versus virtue’ we tend to see the British idealists as the philosophers who engage with virtue. However, they do have a distinctive contribution on social justice. Certain aspects of this contribution are already well recognised, while some still await recognition. David Boucher has emphasised the difference between the post-Rawlsian approaches to justice which focus on fairness, impartiality, mutual benefit, desert and entitlement, on the one hand, and the British idealist understanding of justice as a theory that rests upon the metaphysics of the person and a definite conception of the good, on the other.² With respect to justice, the British idealists focus not so much on procedures and impartiality, but on substantive visions of social and personal good. In addition to being different, on Boucher’s account, the British idealists’ theory of justice overcomes certain dualisms that seem to dominate contemporary analytical political theory, most importantly, the ‘justice-virtue’ dualism.³ Simhony has demonstrated the capacity of Green’s rights theory to overcome the liberal anxieties about the British idealist teleological conception of rights. If anything, she argues, Green’s theory has the resources for a constructive critique of liberalism itself, challenging its assumption that a teleological conception of rights subverts the primary normative role of rights because teleological rights are supposed to be derivative, not fundamental.⁴ In other words, Green’s theory of rights not only defies liberal anxieties but also reveals the complex nature of liberalism.

Gaus demonstrates a connection between Green's 'rights recognition thesis' and moral internalism.⁵

This paper will seek to show the advantages of the personal ethics perspective employed by the British idealist in the analysis of justice. From the personal ethics point of view, there is a moral paradox at the heart of justice. This paradox, implied by Green and clearly spelled out by Bosanquet, is to do with the observation that from the standpoint of the moral agent, the claims for justice are counterintuitive. Justice is what the state or society owes to the individual, but the individual, as a moral agent, thinks of his duties first and of his entitlements second. Justice is important but it is, in the philosophical analysis of Bosanquet, even of Green, a secondary moral ideal.⁶ Bosanquet explains why 'it is in a sense, the lowest of social claims'.⁷ The paradox has a solution that is partly articulated by Green and partly through some additional reconstruction of his moral theory. We will see that Green's and Bosanquet's moral philosophy leads us, through a longer path, to the philosophical grounds we already occupy today: those of thinking about human rights as fundamental, not derivative, i.e. thinking about justice as a primary, not secondary moral ideal. The paper will recommend the advantages of this longer path.

There are three related yet distinct philosophical claims here. First, the British idealists saw very clearly the stand off between justice and virtue. The moral paradox implied in the claim for justice, as revealed by Bosanquet, is triggered by articulating a stand off between 'simple individualistic justice' and 'the imperative of public welfare'.⁸ The significance of this can be appreciated against the fact that Rawls's articulation of the dilemma between the right and the good, strongly related to that of

between justice and virtue, is considered one of the greatest achievements of the twentieth century political philosophy.⁹ Secondly, the personal ethics of Green and Bosanquet, underpinned by their philosophy of moral action, with some reconstruction offered here, outlines the way in which this stand off can be resolved without undermining its significance. In other words, the moral philosophy¹⁰ of the British idealist contains resources for the construction of an acceptable for us - the 'post - UN Declaration of human rights' generations - justification of the social ideal of justice. Thirdly, the perspective of personal ethics is beneficial for resolving some of the difficulties surrounding the implementation of social justice: the difficulties arising from the limits of state institutions to effect social justice. Therefore the paper will start with an outline of a particular conception of social justice. This conception will serve as a background against which the significance of the Green's and Bosanquet's theories of justice can be appreciated.

The conception of social justice outlined in section one will differ from the Rawlsian one, but it will still be a contemporary one to the extent that it builds on Philip Pettit's neorepublican theory of freedom. The section will anticipate the ways in which the personal ethics perspective of the British idealists would be useful in resolving some of the problems we face in the pursuit of social justice. Section two looks at Bosanquet's theory of justice and the philosophical paradox of proclaiming justice as a moral ideal. In this context we look at the nature and implications of the British idealists' moral philosophy and reveal the extent to which it defies our standard perception of it as a philosophy that conflates the personal and the common good. Section three turns to Green's theory of rights, reveals the similarity and the differences between the two idealists, and takes the analysis of their moral theory a

step further. Sections four and five explore the potentials of the idealists' understanding of justice to resolve the dilemmas it uncovered and to offer solution to problems which the institutional approach to justice cannot resolve.

1. Social Justice in general and the role of the personal ethics approach

More broadly, the idea of social justice implies the understanding that there are systematic sources of legitimate advantage and illegitimate disadvantage for individuals in virtue of their status of members of particular collective categories like race, gender or class, for example.¹¹ More specifically, the conception of social justice that will be advanced here builds on the implications of Pettit's neorepublican theory of freedom. If we accept the normative and sociological analysis behind Pettit's definition of freedom as non-domination, we will be able to engage with a conception of justice along the following lines.¹² Social justice aims to redress social injustice where the latter is seen as unequal access to power resources that allows one social group to dominate another. We can plausibly argue that the same thing which causes unfreedom, according to Pettit, that is, domination, also causes social injustice.

Perceived in this way, the purpose of social justice is to redress the injustices caused by the existing social inequalities. In particular, social inequalities that result in a domination of one social group over another, when such domination can be potentially used to oppress. Social inequality is based on unequal access to resources which gives one social group power that can be used to exploit another social group. Pettit argues that the nature of the resources by virtue of which some may have power over others vary and these resources include 'physical strength, technical advantage,

financial clout, political authority, social connections, communal standing, informational access, ideological position, cultural legitimation' among others.¹³

Social justice is about social equality.¹⁴ And equality is understood as equal access to the type of power that has caused social injustice. For example, let us say that we have accepted an argument to the effect that, in a specified context, gender inequality is based on different access to material and cultural resources, but not on different access to legal resources. Then, in order to address the social injustice of gender inequality, we will have to pursue equality only of those resources that are the cause of the imbalanced power relation. The first step in addressing issues of social injustice is to identify those groups that suffer oppression. We can borrow examples from Pettit's neorepublican theory: practices of oppression can be found in the relations between employers and employees, men and women, insiders and outsiders, members of dominant versus members of minority cultures.

This understanding of social justice can also be called a binary understanding in view of the fact that it singles out two social groups: the oppressed and the oppressors. This qualification has particular significance in the context of my intention to mark the role of the personal ethics approach employed by the British idealists.

David Miller usefully highlights two general approaches towards social injustice: the institutional and the personal ethics approach. For him, the personal ethics approach focuses on one's personal duties and deals with a question of the following kind.

What am I, as an individual, bound to do for my fellow citizens?¹⁵ If I am disturbed by the social injustice in my society, is there anything that I, personally can do? By

contrast, an institutional approach would focus on the government and other public organisations, and seek the best institutional arrangements that will bring 'fair allocation of rights, opportunities, resources and so forth'.¹⁶ Miller concludes that we should draw on the two approaches, yet the institutional approach is preferable. This seems to be the position of Pettit as well. He gives us a good account of the type of policies that can tackle and overcome relationships of oppression.¹⁷

The personal ethics perspective to social justice receives less attention in contemporary liberal political theory.¹⁸ Pettit, in particular, acknowledges the importance of the civic virtue route to the protection of republican freedom, and by implication, to the pursuit of social justice, but he treats it as of secondary importance.

Here is a suggestion about how the personal ethics approach could be employed in the service of social justice. If the institutional approach is exemplified by the use of policies aiming to overcome relations of oppression, the personal ethics approach would resort to a direct appeal to these groups who wittingly or unwittingly are in possession of excessive, potentially oppressive power resources. These groups can be asked to voluntarily devolve their powers. For example, men should be aware that women are in a socially more vulnerable position and therefore they should voluntarily share the domestic and childcare duties. The dominant culture of a nation state should allocate financial resources to minority cultures so that the latter could maintain their existence.

The institutional approach to social justice relies on the capacity of institutions to occupy impartial ground and therefore successfully identify social inequalities, as

well as on their possession of sufficient power to redress effectively those inequalities. There are obvious limitations in both of these aspects. Public officials or civil servants are often themselves members of one or indeed several oppressive social groups which is an obstacle to their impartial judgement. There are also limits to the power a government has, for example, to redress material inequalities: the capacity of either right or left wing governments to raise taxes is notoriously little. A personal ethics approach would be useful in speaking directly to the parties concerned. An argument can be made that justice is not only in the hands of public institutions but also in the hands of those whose possession of potentially oppressive power causes the social injustice. The personal ethics of the British idealists provides us with the philosophy that would speak directly to those people.

The very fact that distributive justice plays such a prominent role in the post-Rawlsian discussions of justice reveals the extent to which the institutional approach has become predominant. Discussions of fair distribution, however, imply that all is in the hands of one agency equally related to all and already committed to being fair: some type of ideal government that exists above social disparities and possesses more power than the dominant groups of its society. Social justice, I would argue, is better understood as a binary relationship between two groups – that of the oppressors and that of the oppressed. The state can mediate this binary relationship with the purpose of strengthening the position of the oppressed. But the state – particularly a state that commits to liberal values – is restricted in its capacity to *force* the group of the ‘oppressors’ to follow its policies aiming to introduce social justice. Apart from lacking sufficient power, a liberal state would not find it ideologically acceptable to overrule the will of those, who as members of a particular social relationship possess

potentially oppressive power. The subsequent analysis of Green's and Bosanquet's theories of justice will demonstrate the capacity of their personal ethics to deal with binary relations. More specifically it will give us an insight into the type of transaction that occurs in the process of achieving social equality.

Let me conclude this section which aims to provide a framework rather than an elaborate argument. I have outlined a binary conception of justice where injustice is seen as an unequal access to power resources which allows one social group to dominate another. This conception mimics Pettit's definition of neorepublican freedom where unfreedom is caused by those whose possession of dominating powers allows them to interfere arbitrarily with other people's lives. Such an understanding of justice invites us to see the state as a medium through which justice can be performed rather than as the agency that performs it through its institutions. Justice is a matter of a new relationship between oppressors and oppressed where power resources are being reallocated. If we can see social justice in terms of a relationship, we can see how personal ethics can fit in. Even if we are discussing relations between groups and not persons, the first person point of view, characteristic of personal ethics, is of obvious relevance here.

One could legitimately ask why the British idealists, and Green and Bosanquet in particular, should be seen as exponents of personal ethics, given the fact of the significant role institutions play in their political theories.¹⁹ Wouldn't we be giving them one-sided portrayal and ultimately undermine, as opposed to enhance as intended here, the potential of their political philosophy to engage with issues of social justice? The comprehensive answer is that they did both and their political

theory is that much better for it. Tyler's recent analysis of Green as 'a radical republican' makes the point that the British idealist demonstrated that virtues and institutions are 'mutually sustaining and promoting rather than being arranged in some stable causal relationship (where the presence of one is the pre-condition of the existence of the other, *but not vice versa*)'.²⁰ The less comprehensive answer, which should be sufficient for the purposes of this paper, is that the personal ethics approach is a prominent feature of the work of the British idealists. This approach is revealed by their focus on moral character and moral disposition; by their understanding of morality as premised on the right type of intention and not on the outward result of an action; by the fact that their moral philosophy has been defined as 'moral psychology'²¹, as 'phenomenological'²² and as representative of 'moral internalism'.²³

2. Bosanquet on justice: why justice is a secondary virtue

T.H. Green discusses justice in a few sections of *Prolegomena to Ethics*²⁴ but it is his theory of rights, often brought to light in contemporary research on human rights,²⁵ that gives us a more comprehensive understanding of his ideas of justice. This theory of rights will be addressed in the next section, and the way it underpins an understanding of social justice will be the object of the last two sections. Unlike the case of Green, the topic of justice receives a good deal of explicit attention by Bosanquet. A factor that explains this difference is the significant change of the social environment in Britain in the time between Green and Bosanquet: between the late 1870s and early 1880s when Green gave his lectures on political obligation and the events of 1915, which Bosanquet discusses in his *Social and International Ideals*. The issue of justice acquired some prominence in political debates and this prominence

was linked to the increasing influence of socialist ideas. The fact that, unlike Green, Bosanquet discusses justice directly, reflects this change in political climate.

Bosanquet gave a lecture on 'Justice' which was subsequently published as a part of a chapter 'Three Lectures on Social Ideals'.²⁶ As the introduction to the three lectures reveals, the context of Bosanquet's discussion of justice is the polemic generated by a working class articulating its own demands.²⁷ The members of the working class have started to 'claim their own function, their own culture, their own duty, their own ambitions for a worthy and influential life'.²⁸ The working class or its spokesmen are seeing these claims as part and parcel of a fight for 'justice'. This is the political backdrop to Bosanquet's very philosophical discussion of the nature of justice. His aims are to uncover what is distinctive about the demand for justice and the place of this demand among our other social ideals and necessities.

Bosanquet quickly comes to his main point: justice is very important, yet less so than other social ideas, like the public good, political efficiency, safety, love or mercy. The comparison with the social ideals of public welfare, for example, places justice in a secondary position. There are three steps in this argument. The first is identifying justice as an 'individualistic' social ideal. The second step is uncovering an opposition between individualistic and public social ideals. This in itself is enough to reveal that the place of justice is only secondary. So, a third step is the claim that public virtues like love, mercy and service to the common good always come first. There is also a fourth, final step, the justification of the social ideal of justice. In the course of this discussion I turn to a particular common aspect of Green's and Bosanquet's moral philosophy: that service to the common good overrides in significance one's engagement with her narrowly perceived personal good. This, for some controversial,

feature of their moral philosophy substantiates further the claim that justice is a secondary social ideal. This feature is rather important as it plays part both in the making and the resolving of the paradox. Let me give some more detail about each of these steps.

Bosanquet's conclusion that justice is individualistic is rather swift. It is based simply on the observation that justice is what the state or the society does for individuals. 'Justice lies in impartial distribution of advantages and disadvantages to individuals. In that sense it is "individualistic".'²⁹ We could take issue with Bosanquet and argue that the fact that justice is aimed at individuals, does not necessarily make it 'individualistic'. We are rather well versed in the language of human rights and therefore able to argue that treating each individual in a fair manner is part of the public good. However, sometimes exaggeration helps to emphasise a point. Justice is a type of social ideal where the individual is a direct beneficiary of the recommended social practice. Other social ideals, like national prosperity for example, benefit individuals indirectly. To give credence to Bosanquet's position, we could say that the very language of justice is a language of giving individuals their due, a language of claims for fair treatments made by individuals. The emphasis is on entitlements not on duties, on receiving, not on giving.³⁰

The next step is the most important one, as it already anticipates the conclusion of subordinating justice to the service of public good. This is the step of articulating the opposition between the two kinds of social ideals: justice on the one side, and social ideals based on service to others, on the other side.

So we find that practically there is a recognised opposition between the maxims of common Justice – the general rule of equal treatment of individuals – and the maxims of political efficiency or the public good or safety, or love, or mercy – anything in which the individual is absorbed. ...[When you demand justice you are] thinking of yourselves as separate particular individuals *making claims*, you have only a very imperfect apprehension of what you are.³¹

Justice as the ‘rule of equal treatment of individuals’ contrasts with ‘maxims of political efficiency’ because, in the context of the first, the individual is a claimant, and in the context of the second the individual is a benefactor. When we demand justice and when we do our share in maximising public welfare we wear two different hats.

Once we become aware of the opposition between justice and the other social ideals, we are then faced with the inferiority of justice. The ideal of justice pulls in the opposite direction to ideals of public service. Instead of focusing our efforts on our duties, we are being distracted by the demand to acquire what is believed to be our due. The above quotation takes us to Bosanquet’s philosophy of human agency: a philosophy according to which the individual in his isolation from society is profoundly incomplete.

A general outline of Green’s and Bosanquet’s philosophy of human agency, or as David Boucher calls it, ‘metaphysics of the person’ would be very helpful here, as this metaphysics also contains a significant common element of their moral philosophy.³²

According to the two British idealists, individuals as they are at any given point in time are imperfect and incomplete. At any given point in time, their potential is not yet fulfilled, their capacities are not fully developed. That is why they are restless. Their capacity to be better combined with their current imperfection propels them, so to say, towards the pursuit of self-perfection. Our human nature is such that we tend to pursue self-realisation. The British idealists' metaphysics of the person is the metaphysics of self-realisation. The pertinent observation here is that individuals, as they are, are imperfect, unrealised: they only acquire substance through their pursuit of realisation. This has moral implications.

Self-realisation in itself combines a personal and a public goal: full deployment of one's capacities, in personal plan, and dedication to the common good, in social plan. However, both self-perfection and the service to the common good imply preparedness to sacrifice one's personal pleasures. These include desires that do not promote either our self-development or the common good, like selfish pursuits, laziness, or pleasure seeking. Green generally terms these 'inclinations of the moment' or 'inclinations to pleasure'.³³ Here is the place where Green's and Bosanquet's moral philosophy emerges out of their metaphysics of the person. If, according to their metaphysics of the person, we acquire our human essence through the pursuit of self-realisation, their moral philosophy spells out that self-realisation is achieved in the pursuit of the common good through personal effort that entails sacrifice of selfish pleasures. Moral action is based on 'fundamental readiness to forgo pleasure for duty'.³⁴ In the context of Green's and Bosanquet's moral philosophy, the common good overrides the personal good, narrowly conceived. Their moral philosophy is based on, what can be usefully termed, a 'priority of duty': the

idea that an action committed to the common good is always superior to an action that is indifferent or counterproductive to the common good. In the context of moral action, the common good supersedes in importance a narrowly conceived individual good: moral action is constituted by the sacrifice of the latter for the sake of the former.

Bosanquet's analysis of justice reveals that the demands of justice focus on individuality perceived in its own right. When we demand fair treatment we think of ourselves as individual human beings, not as citizens who have duties. And this is the paradox of justice – it seems to be a moral claim, yet it undercuts the backbone of morality: the 'priority of duty'. Our vocation as human beings is to serve the community, while in claiming justice, we seem to do the opposite. We demand service from the community.

The following quotation reveals the contrast between our sense of duty, on the one hand, and the claims for justice, on the other. The quotation is interesting because it offers a psychological portrait of the type of attitude that underpins Bosanquet's moral philosophy: an attitude of wholehearted self-dedication to the public good. Here the term 'ideal justice' does not stand for what we usually understand by justice – as becomes clear at the end of the quotation. Indeed, the purpose is to show that if 'ideal justice' existed it would be the opposite of the conventional understanding, or what Bosanquet calls in the previous quotation 'the maxims of common Justice'.³⁵

Ideal Justice, or the passion for social or human service, may *know*
well enough the inequality it is imposing but it does not *care* to

insist upon it in presence of more important issues. If you can do it you must, never mind whether some one else could do it as well; and therefore, again, the man who recognises it finds its demand the hardest and sharpest claim he can conceive. *His* Ideal Justice holds that he has done nothing while there is anything left for him to do. We are unprofitable servants. But, then, with this you have given up what is peculiar in Justice. You have left the world of claims.³⁶

This is powerful rhetoric giving a vivid expression of Bosanquet's vision of our moral constitution. Our only way of flourishing is by being as good as possible and that means giving as much as possible without claiming anything in return. 'We are unprofitable servants.' Morality is about unconditional giving. It is about spontaneous prioritising of the common good over a narrowly conceived personal good. As soon as we understand what justice is about, we are bound to see that it comes into conflict with our sense of our duty and of our public function. It comes into conflict with Green's and Bosanquet's metaphysics of the person and the moral philosophy implied in it.

But this is not the end of the philosophical story of justice. In addition to 'exposing' the claims for justice and revealing their true 'not enough publicly minded' colours, Bosanquet offers a justification of this social ideal. This is a justification that may be somewhat morally shocking for us, who are well versed in the human rights narratives, yet logical in the context of the moral philosophy that we have discussed so far. The justification of the social ideal of justice is that even as separate and incomplete individuals, we are valuable. It is this incomplete individuality that we

actually sacrifice for the common good. The incomplete individual is the starting point of moral action.

Justice is certainly not the highest point of view; but if it is in a sense the lowest of social claims, that is a way of saying that it is the basis of all social dealing. A universal human claim can be transformed by higher claims, but cannot be cancelled. Individual human beings have to be taken account of; each is one among others, having a bodily and spiritual life of his own, which cannot be genuinely sacrificed or surrendered unless it is first his own to sacrifice or surrender.³⁷

The justification of the social ideal of justice relates to the fact that without individuals service to the common good is impossible. However incomplete and imperfect on their own, individuals are the agents who have to perform the mutually intertwined self-improvement and service to the common good. Self-sacrifice is impossible without the self, no matter how undeveloped this self is. In less dramatic terms, the same message comes from Green – people cannot give to society if they have nothing to give. You cannot expect moral commitment from destitute people.³⁸

What is morally unacceptable from our point of view is that individuals are seen as means to an end, as opposed to ends in themselves. This issue will be addressed in section four. However, there is an important philosophical point here. What Bosanquet spells out in claiming that you cannot sacrifice something that is not your own, is the significance of the imperfect individual. It is the imperfect individual –

that is all individuals at any given point in time – who performs the moral duty, the unprofitable service. If justice is the social ideal that looks after imperfect individuals, it is a very worthy social ideal as it equips them with things of their own. Although on our own we are imperfect, it is we as individuals who perform our duties.

Hence, Bosanquet's philosophical conclusion of the lecture is more even handed. His conclusion is not that justice is not sufficiently important, but that we face a tough moral dilemma.

But, I repeat, I am not using these high principles to support one contention against the other, to advocate, *i.e.*, the absolute State against simple human justice. I am using them only to illustrate the difficulty and urgency of the problem in which all social dissatisfaction probably has its root – the problem of simple individualistic justice over against the imperative of public welfare.³⁹

This is a strong statement in several aspects. Here Bosanquet comes to terms with one of the implications of his moral theory. On the face of it, his moral theory asserts the 'priority of duty', the priority of the common good over the narrowly conceived personal good, the priority of public welfare over the wellbeing of the isolated individual. On analysis, however, it turns out that the individual – always incomplete in his state of isolation and imperfection – plays a fundamental role in the performance of moral action. So although justice is an individualistic and therefore inferior moral ideal, it is, on reflection, indispensable.

There is another conclusion that bears significantly on our perception of the British idealists' social metaphysics. The British idealists, often called the British Hegelians, are traditionally accused of conflating the common and the personal good. This conflation has caused concerns among the liberal critics, as it was seen as indirectly undermining the personal good.⁴⁰ Bosanquet's analysis of justice makes it very clear that such conflation was not the case. He highlights a conflict between the interests of the individual and the interests of the community. In addition, he explains why there is no easy way of resolving the conflict in favour of one side or the other. Although his moral philosophy implies a solution in favour of the common good over the narrowly conceived individual good, his subsequent analysis reveals that the wellbeing of individuals is of vital concern.

Bosanquet's moral philosophy applied to the analysis of justice leads us to a moral dilemma. This dilemma is based on the realisation that 'simple individualistic justice' and 'the imperative of public welfare' exist in tension with each other, yet each makes a valid claim on our loyalty. What about solutions to the dilemma? There are two final messages in his lecture. The first is directed to the socialists and the working class activists who campaign for justice. To them Bosanquet says that they have to weigh the demands for justice against the demands for public welfare. There is however an internal message, so to say – a message about rethinking priorities within the moral philosophy of the British idealists. The lecture on justice started with the paradox of justice – the paradox being that justice is individualistic and as such heavily impeded in its capacity to make moral claims. The conclusion of the analysis, however, is that even if it is individualistic, justice is indispensable. What are the implications of this

discovery with respect to the ‘priority of duty’ and the priority of the common good over the narrowly conceived personal good? Don’t we need to revisit the British idealist moral philosophy and see what changes it will have to endure in order to accommodate the newly discovered significance of justice?

I will now turn to Green’s theory of rights and demonstrate that with some reconstruction this theory can resolve Bosanquet’s moral dilemma. In other words, I demonstrate the capacity of the British idealist moral philosophy to offer a satisfactory - to our moral standards - justification of justice. The advantage of justifying justice on the grounds of British idealist ethics are to be found in the fact that we end up with a potentially useful notion of social justice as a dynamic relation between two groups of people: those who possess more power resources and those who are deprived of them. British idealist ethics offers us a binary relation model, which when understood could help us explain the kind of transactions that we seek in the pursuit of justice.

3. Green on rights: why rights are ‘secondary’ to the promotion of the common good

Green’s theory of rights seems more pragmatic, and less philosophical, than Bosanquet’s theory of justice. This pragmatism has proven to be attractive to contemporary theorists.⁴¹ Yet, this section will demonstrate that Green’s theory of rights can be fully understood only in conjunction with his moral philosophy.

Green starts with the observation that rights exist as given to us by society.⁴² His argument, as developed in the *Lectures on the Principles of Political Obligation*, aims to challenge natural rights theories. Rights are not pre-given, he argues, they are given. They do not belong to individuals on the strength of their unique divine or human constitution – they are social products. Rights can be seen as ‘natural’ to the extent that they contribute to the advancement of a common human end,⁴³ or to the extent that they can come into conflict with unjust social practices. Yet they are not ‘natural’ in the sense of being independent from society. Rights are ‘“natural” in the sense of being independent of, and in conflict with, the laws of the state in which [one] lives, but they are not independent of social relations.’⁴⁴ Rights, Green famously argues, exist only as recognised by society. And society, through its practices or institutions, will recognise rights only if ‘there is some common consciousness of utility shared by the person making the claim and those on whom it is made’.⁴⁵ This pragmatic, almost utilitarian, approach however is very strongly interconnected with Green’s moral philosophy which is not at all pragmatic or utilitarian. Let me reveal the logic underpinning this theory of rights, expose the universalist assertions it makes and, after some reconstruction, link those assertions to a morally defensible theory of justice.

Green’s theory of rights can be explained as composed of several logical components, or logical steps. The first and in a sense the most important one is Green’s explanation of rights as products of moral transactions. This component will shortly receive more attention, but in a nutshell the idea is the following. We have rights because somebody else gives them to us. This somebody else, in the process of recognising our rights, acts as a moral agent. The second step of the theory is the observation that

moral action cannot be forced from outside. The third step follows from the second. Because the practice of rights cannot be enforced, our best chance of stimulating such a practice is by creating and maintaining communities where people would be motivated to voluntarily perform recognition of rights. Once we see the whole philosophical logic of Green's rights theory as displayed in these steps, we will be able to address the concerns raised against it from a liberal point of view. We can see that the claim that rights are based on social recognition does not entail relativism and neglect of the value of the individual. In addition, we will be able to use Green's moral theory in constructing a satisfactory justification of rights along the lines of asserting rights as ends in themselves. Let me go through each of the three components of Green's rights theory in more detail.

As outlined above, the first component of Green's theory is to do with the idea that rights are outcomes of moral actions. According to Green, the process of ascribing rights is a process of recognising rights. There are two sides to this process. On the one hand, we have those who claim rights, and on the other hand, those who recognise these claims. Those who do the recognition of rights play a particularly important part as they are the ones who actively produce them, so to say. I have previously argued that for Green, the process of recognising rights amounts to, or exemplifies, moral action.⁴⁶ Green does not flag this up often enough, and this must be one of the reasons why commentators have not picked up on this aspect of his rights theory.⁴⁷ But the implications of the claim that the recognition of rights is a moral action are significant, as we shall see. The textual evidence in support of this interpretation is unambiguous:

There ought to be rights, because the moral personality – the capacity on the part of an individual for making a common good his own – ought to be developed; *and it is developed through rights; i.e. through the recognition by members of a society of powers in each other* contributory to a common good and the regulation of those powers by that recognition.⁴⁸

Recognition of rights is part of moral action in the same way as the pursuit of the common good is. Looking after your fellow citizens is a form of contributing to the common good. Rights are ascriptions: they are an outcome of moral action. Spelling this out is important because it allows us to tap into the resources of Green's moral philosophy and gain further understanding of his overall position. As already discussed in the section on Bosanquet, moral action implies overcoming narrowly personal interests in the name of contributing to a good which we hold in common with others. The process of recognising rights, as a moral process, implies an element of self-sacrifice. In this sense the person recognising rights has ontological priority over the person who claims these rights. Those who claim rights depend on those who recognise them: their status is secondary, not in mere practical terms but in moral terms as well. And as, usually, the perspective of justice is associated with the perspective of those who claim rights, justice is a secondary moral ideal. Although Green does not state this as explicitly as Bosanquet, his way of explaining rights asserts the moral priority of the rights recognisor over the rights claimant.⁴⁹

The second element of the theory is that moral action cannot be imposed by other people – it can only be voluntarily undertaken by the moral agent himself. We cannot force others to recognise our rights – we can only hope that they will do so.

This explains why, for Green, the performance of rights recognition cannot be imperative. Our rights are in the hands of others – hence the limits of our control over the implementation of rights. We, on the other hand, have full control, over our own duties. We can guarantee that these will be performed.

In earlier work on Green's rights I have criticised Green for an insufficient commitment to rights.⁵⁰ I have observed the disparity between his treatment of our moral duty as something of primary significance, on the one side, and his treatment of rights, as something in the hands of social recognition, and therefore in the hands of convention, on the other side. The question raised was why rights were not as imperative as our duty to the common good. Now, I believe that there is a clear explanation of this disparity. Rights are not as imperative as our duties, because our rights are somebody else's duties. As rights are usually seen from the perspective of the claimant, as such, they do not constitute duties but claims. From the first person point of view, as a claimant, I have no control over my rights. I cannot impose their performance on the others.

Here the differences between Green's position and the contemporary take on human rights is obvious. Now we could swiftly respond to this by saying that, if not us, then the state can impose the recognition of our rights. Once our rights acquire *legal* status, they can be enforced. But in saying this we would be taking an institutional approach to rights – an approach that, arguably, conceals the moral transaction that underpins

the practice of rights. The institutional approach is tempting and it is also available to us. My recommendation is that we pause longer before turning to it. I believe that we could gain by focusing on the nature of rights from the personal ethics perspective developed by Green. The personal ethics perspective reveals the secondary status of rights. Rights, as products of the moral actions of others, are not under our control. In order to have rights, we depend on other people's good will. Although the state can play a much more significant role in the process of enforcing rights than Green acknowledges, his claim, that the state is a mediator rather than a key agency in a relation between the two parties of rights claimants and rights recognisers, still remains very strong.

The third component of Green's rights theory is the claim that the practice of rights is possible only within a community where people recognise each other as equals.⁵¹ I will look at this component in section five.

Here I will turn to the implications of the first two components for the discussion of justice. If we think about Green's theory of rights as explained so far, we can see that he brings us to the same opposition between claiming rights and doing service to society, as Bosanquet. Two differences are to be observed, however, one in favour of Green and one in favour of Bosanquet. First, unlike Bosanquet, Green manages to explain the pursuit of rights, and therefore justice, as a part of the common good.⁵² The second difference is that, with Green, this opposition between claims and duties is a bit more disguised. This is a drawback as this also disguises to some extent the type of moral transaction that, with the help of the reconstruction offered here, aids us

in justifying social justice. Let me look more closely at the second of these differences.

4. Reconstructing Green's rights: why rights are ends in themselves

So far we have established that both Bosanquet and Green give social justice a secondary status as a social ideal. Both philosophers offer strong reasons in support of justice, yet both fall short of our moral expectations of seeing rights or justice for individuals as something with fundamental political significance. Let me turn to the opposition between claims and duties, very clearly spelled out by Bosanquet and less so by Green. It takes some textual analysis of Green's lectures in order to pick out that recognition of rights is a moral action, that we have two parties involved – those who claim and those who recognise, and that the status of giving/recognising rights is not the same as the status of receiving/claiming rights. These oppositions are to some extent disguised in the *Lectures* due to the 'circular' definition of rights offered by Green. Most of Green's definitions of rights describe the two separate transactions of giving and receiving rights, but as will be shortly demonstrated, the two transactions are somehow conflated into one claim which in itself represents Green's rights theory inaccurately and leads to a conclusion that is unsatisfactory from the contemporary moral point of view. I will give a number of quotations that demonstrate the circularity of Green's definition of rights. My purpose here is to criticise the manner in which Green disguised the opposition between giving and receiving, so fundamental for his moral theory. Once I 'expose' Green for not being sufficiently open about the two moral transactions in his rights theory, I then suggest a way of justifying rights as ends in themselves.

Green's definitions of rights are circular to the extent that often they consist of two identifiable sub-clauses. The first is that rights are powers that are given to the individual by a society and the second is that they are given to the individual on condition that he will then make use of them in his service to the common good. So on the one hand, rights are there to give individuals more powers. On the other hand, individuals will use these powers for service to the common good.

‘A right is a power of which the exercise by the individual or by some body of men is recognised by society ... as itself directly essential to a common good.’⁵³

The circularity is demonstrated here best: ‘A right is a power (of acting for his own ends – for what he conceives to be his own good) secured to the individual by the community, on the supposition that its exercise contributes to the good of the community.’⁵⁴

In some definitions, however, these two elements are conflated to the effect that the second element, about the conditionality of a right on one's service to the common good, gains priority. The shorthand definition asserts that:

‘A right is a power claimed as contributory to the common good.’⁵⁵

The conflation of the definition disguises the fact that in essence the practice of rights involves two reciprocal moral actions. As revealed in the full circular definition, the first is moral action of the person recognising the claimant's right. And the second is

the expected moral action of the claimant who, once equipped with the powers of his recognised rights, contributes in his own turn to the common good. In the shorthand definition, Green conflates the two moral actions in one general message to the effect that ‘rights are justified on the grounds of being an essential component of moral action’. But whose moral action this is, remains vague. And when this vagueness is resolved by the shorthand definition according to which a ‘right is a power claimed as contributory to the common good’ we are faced with the somewhat disturbing conclusion that individuals and their rights are seen as valuable only if they serve the common good.

The type of justification of human rights that we, the ‘post-UN Declaration of Human Rights’ citizens, would be satisfied with is a type of reasoning that would explain rights, and the individuals who claim rights, as ends in themselves. With Bosanquet as well as with Green, justice and rights are justified on the grounds that they are essential for the social welfare, but not on the grounds that they are ends in themselves.⁵⁶

A careful look at Green’s rights theory in conjunction with his moral theory would reveal that he is very close to offering such a justification. Green gives us the two perspectives involved in the practice of rights – if he drew his conclusions from both of them, as opposed to, from just one of them, he would have articulated the ‘rights as ends in themselves’ conclusion.

As discussed earlier, there are two moral actions implied in the practice of rights: the moral action of the person or the group of people who recognise rights to the

claimants, and the potential moral action of the benefitted claimant who could now serve society with increased powers. Green draws his conclusions and the shorthand definition from the second perspective. In the context of the moral action of the rights recipient, she and her rights are instrumental to the common good. She and her rights are a means to a higher end – the good of the community. Green's claim that 'right is a power claimed as contributory to the common good' – a claim that portrays rights as means to an end – is a claim based in the context of the above described moral action of the rights claimant.

However, if Green were to extract a definition of rights in the context of the first moral action – the action of those who recognise rights – then he would have claimed that rights are an end in themselves. The recognition of rights is the unconditional aim of the person who sees his recognition of rights as part of his service to the common good. As outcomes of moral action, rights are ends in themselves. Rights are ends in themselves because this is how they are seen by those who recognise them. Green's circular definition states that rights are recognised to the claimant only on condition of the claimants' future service to the common good. But this 'conditionality' should not be allowed by Green's own understanding of moral action. Moral action is based on unconditional service to the common good.⁵⁷ This conditionality is precluded by Green's belief that within the context of moral action we are prepared to sacrifice our narrowly conceived personal good. We do not serve the common good expecting personal benefits in return. This conditionality is clearly precluded by Bosanquet who defined our commitment to public welfare as unprofitable service. If Green were consistent with his theory that rights are outcomes of moral actions, he would not be able to claim that rights are recognised on condition of the claimant's future

contribution to the common good. This is due to the unconditional nature of the service to the common good performed in the moral action.

This reading of Green can be seen as controversial on two accounts. The first is that I overstate the extent to which Green makes rights *conditional* on future contribution to the common good.⁵⁸ Yet even if this point is made in milder terms – that is, rights are given to individuals *in the hope* that they will engage with some service to society in future – the claim that rights are justified as means to the social wellbeing remains valid. However, one could challenge the conclusions reached here from the opposite perspective: the perspective of accepting Green’s justification of rights on the grounds of the claimants’ expected contribution to the common good. The question would be why the reconstruction offered here, explaining rights as ends in themselves, supersedes the former, the more standard, reading of Green’s theory.⁵⁹ It is not a matter of one reading superseding the other, but of offering a new reading that may prove useful. The reconstruction suggested here unlocks hitherto unused resources of the British idealists’ moral philosophy to address issues of rights and social justice, as we will see in the final section.

5. Social justice, personal ethics and equality

Let me turn back to the question raised at the outset of the paper, about the advantages of personal ethics for understanding social justice as well as for resolving the ills of social injustice.

The moral philosophy of Green and Bosanquet gives us a portrayal of moral action as an interaction between two parties: those who perform moral action and thus serve the good of others, and those who benefit from this moral action. In the context of discussing justice and rights, these two parties are the party of those who recognise the rights of others and the party of those who claim rights. Technically, we could belong to either party: however, the observation here is that in every single moral transaction we belong to only one of them. It is the personal ethics perspective that led to this way of explaining things. The above reflections on the British idealist ‘metaphysics of the person’ helped us spell out this morphology of the moral transaction, so to say. What is potentially very useful to our discussion of social justice is that, we could apply this analysis not only to persons but also to social groups. Both Green and Bosanquet refer to groups as well as individuals.⁶⁰ The question now is whether we have some more substantive information about the nature of these groups. The answer to this question is to be found in the afore mentioned third component of Green’s rights theory.

According to Green, the practice of rights is only possible in a certain type of community where people see each other as equals and share a common consciousness of the common good. The necessity of such a community becomes obvious in the light of the fact that the recognition of rights cannot be enforced. The existence of such a community will be conducive to a reciprocal practice of recognising rights. It will give individuals the assurance that their moral action of recognising rights will be reciprocated by a similar moral action by the others.

What is of interest here is Green's idea of equality in the context of recognising rights. Green makes two claims. First, that only in a social environment where people recognise each other as equals can we have the practice of mutual recognition of rights. But he also makes a second claim that is much more useful in terms of understanding the nature of the social interaction involved in rights recognition. He claims that recognising others as equals *amounts to* recognising them as rights-holders.⁶¹ 'But rights have no being except in a society of men recognising each other as *isoi kai homoioi* [equals]. They are constituted by that mutual recognition.'⁶²

In a similar manner, Green's discussion of justice in *Prolegomena to Ethics* raises the issue of social equality. There, in the context of a chapter on the nature of the common good,⁶³ Green brings up the difficult question about its scope: who are the people we are prepared to share a community with? Green's clear message is that we have to be prepared to expand our horizons, engage beyond the boundaries of 'race', 'religion' or 'status', and seek 'universal human fellowship'.⁶⁴ We have to make incremental steps towards social equality: 'the practical value of man's morality increases with the removal of limitations upon his view of the kind of humanity which constitutes a claim equal with his own'.⁶⁵

The idea that the process of recognising others as equal to us is constitutive of rights recognition, as well as of justice, has a lot of potential. Green explores in detail only one side of it, while I would like to look at the other side. Green looks at what it will take those who are in the vulnerable position of not having any rights – slaves – to gain the status of equality. His answer is that they would have to demonstrate 'capability of living in a community'⁶⁶ which goes together with the ability to engage

in the pursuit of a common good. It is of interest however to look at those who would recognise the slaves as equals. Who are those people and what kind of things would they have to do? We could construct a possible answer. These must be a group of people who already live in a community where the practice of recognising rights occurs and where people see each other as equal. This must be a group of people who enjoy the powers given to them by the ascription of rights – people with some established social status.

On these grounds, we could describe the recognition of rights as a social outreach activity, where members of a group with an established social status are prepared to accept other people, who are not currently accepted as of equal social standing, as equal, i.e. as fellow members of their community. This is not a random outreach activity – it is directed towards those who have expressed the desire to enter the community in question and who are prepared to demonstrate commitment to a shared vision of common wellbeing.

This is a rather general picture that will raise a number of legitimate questions, one of which is about the ways in which these social groups will change as a result of the pursuit of justice. Green's expectation is that the aspiring group will have to prove its worth, while much less change is expected from the group with the established social status. Richter criticises Green for this inclination: 'This persistent moralism applied to the disadvantaged classes led to the expectation that every act of justice or equality would produce a transformation which was not required from those holding wealth and advantage by birth or achievement in other classes'.⁶⁷ Richter's analysis gives support to my observation that Green's rights theory explains justice both as a form of

upward social mobility, and as a relation between two groups of different social status. In defence of Green, we should say that he takes more than seriously the duties of the upper classes towards social justice. Green's theory of positive freedom is one that builds on his commitment to social justice.⁶⁸ This theory outlines the responsibilities of employers and landlords towards their employees and land tenants.⁶⁹

We can see how the personal ethics of the British idealists forms the foundation of claims about the nature of just relations between social groups. Justice, as well as the recognition of rights, obtains in the context of the right kind of relation between two social groups. They obtain when the group of those with established social status accept as equal those who aspire to similar status but have been denied access to it.⁷⁰

Conclusion

My desire to explain the contribution of Green and Bosanquet on social justice by reference to a contemporary understanding of social justice have resulted in a rather complex paper. But I hope that all the threads come together in the end, or at least all of them add up to a coherent and informative picture.

The moral philosophy that underpinned Green's and Bosanquet's understanding of social justice offers a personal ethics approach as opposed, and in addition, to an institutional approach to social justice. Green saw the state as 'the sustainer and harmoniser of social relations'⁷¹ and the logic as well as the desirable form of these social relations were explained through the framework of his and Bosanquet's moral

philosophy. This paper has explored the capacity of their personal ethics approach to explain relations not only between individuals but also between social groups.

The institutional approach to justice has its disadvantages. Some of the limitations of state institutions to impose justice are due to the fact that the ‘oppressive’ social groups hold a lot of power in their hands to implement the changes conducive to social equality and justice respectively. A personal ethics approach taps in, more subtly than the institutional approach, into making a constructive use of this power, by encouraging the groups of the ‘oppressors’ to voluntarily improve the conditions of the ‘oppressed’ and thus raise their social status. An institutional approach would aim at a legal enforcement of rights and thus pay less attention to the possibility of persuading the oppressive groups to voluntarily recognise rights or act in favour of justice. British idealist perspective looks in a friendly manner towards the powerful – they should not be bullied into doing the right thing. The more subtle and useful outcome of this ‘friendly attitude’ is the form of recognition they give, through their moral theory, to those in possession of more social resources. If these people promote justice by empowering those with less social resources, they engage in moral action. And moral action is praiseworthy. This is the ‘carrot’ as opposed to the ‘stick’ approach to promoting social justice.

The institutional approach to justice and rights has its attractions. A good legal system of rights enforced by state institutions could bring justice without relying on the good will of the powerful to devolve powers, on the one hand, and on the efforts of the powerless to demonstrate their capacity of serving the common good, on the other hand. But in taking this shortcut, the institutional approach conceals what is at stake in

the process of achieving social equality between two groups. It either pre-empts or disguises the moral action performed by those who recognise rights. And this moral action is very important as it provides the perspective that is crucial in justifying rights as ends in themselves.

The British idealist personal ethics approach gives us an alternative path - to both the classical natural rights approach and the post-Rawlsian 'priority of the right over the good' approach⁷² – for justifying rights as ends in themselves. Their justification is not based on the assumption that the common good should never trump the personal right. If, anything, it is based on the opposite assumption – that in the context of moral action, the common good trumps the narrowly conceived personal good. What this paper has shown is the capacity of moral action, conceived in a British idealist manner, to yield recognition of rights. The practice of rights is not feasible unless some of us are prepared to act in a dutiful way – as Rawls would agree. Acting in a dutiful way, however, as Bosanquet spells out in psychological detail, is nothing short of unprofitable service. The only way in which some of us would have their rights recognised in an unconditional manner would be if others were prepared to recognise them in that manner. The underlying observation here, implicit in Green's rights theory, and spelled out in the opening section of this paper, is that although the entitlement to rights is universal, the practice of rights takes place when one social groups already in possession of rights is prepared to recognise the same rights to another social group that claims them but is not yet in possession of them.

¹ I would like to thank and acknowledge the help of Peter Nicholson, John Horton and two anonymous reviewers.

² Boucher, D. (1997) 'British Idealism and the just society' in Boucher, D. and Kelly, P. (eds) *Social Justice: From Hume to Hayek*. London: Routledge, pp. 80-101. The British idealists' theory of social justice is a theory, Boucher argues, 'that explicitly seeks to transform individual self-interest into social virtue by making all institutions, including factories, mines and the state itself into educative entities.' p. 80.

³ Ibid., pp. 83-4. William Sweet makes the point that 'an idealist theory of rights might prove a means of resolving some of the difficulties found in contemporary liberal political thought'. See Sweet, W. (1997) *Idealism and Rights. The Social Ontology of Human Rights in the Political Thought of Bernard Bosanquet*. Lanham: University Press of America, p. 8.

⁴ Simhony, A. (2006) 'Rights that Bind: T. H. Green on Rights and Community' in Dimova-Cookson, M. and Mander, W.J. (eds). *T. H. Green Ethics, Metaphysics and Political Philosophy*. Oxford: Oxford University Press, pp.236-62, p. 243.

⁵ Gaus, G. (2006) 'The Rights Recognition Thesis: Defending and Extending Green', Dimova-Cookson, M. and Mander, W. J. (eds). *T. H. Green Ethics, Metaphysics and Political Philosophy*. Oxford: Oxford University Press, pp. 209-35.

⁶ This contrasts with the position of Rawls, according to whom justice 'is the first virtue of social institutions'. Rawls, J. (1999) *A Theory of Justice*. Oxford: Oxford University Press, p. 3.

⁷ Bosanquet, B. (1917) 'Three Lectures on Social Ideas', in *Social and International Ideals*. London: Macmillan, pp. 189-248, p. 198.

⁸ Ibid., p. 210.

⁹ M Matravers, (2008) 'Twentieth-Century Political Philosophy' in Dermot Moran (ed.), *The Routledge Companion to Twentieth Century Philosophy*, Abingdon, Oxford: Routledge, pp. 883-912.

¹⁰ The author does not assume that the moral philosophy of all British idealists and of Green and Bosanquet in particular, is identical. However, the paper engages with specific aspects, addressed in detail in the subsequent sections, that are common to both Green and Bosanquet. The general similarity between Green's and Bosanquet's moral philosophies are acknowledged by Bosanquet, himself (Bosanquet, 2001, *The Philosophical Theory of the State* in Gaus, G. and Sweet, W. (eds) *The Philosophical Theory of the State and Related Essays*, South Bend, Indiana: St. Augustine's Press, p. 1), strongly emphasised by Peter Nicholson (1990, *The Political Philosophy of the British Idealists*. Cambridge: Cambridge University Press, pp. 213-15; 217-19; 226-28), and implied in many academic texts that discuss the nature of the British idealists' moral and political thought as a whole.

¹¹ In this context 'social' justice contrasts with 'inter-personal' justice where the focus is on the way individuals may illegitimately disadvantage each other, but where this disadvantage is not related to the individual's belonging to a particular social group.

¹² Pettit, P. (1997) *Republicanism. A Theory of Freedom and Government*. Oxford: Oxford University Press.

¹³ Pettit, P. (1996) 'Freedom as Antipower', *Ethics*, 106 (3), 576-604, p. 583.

¹⁴ Miller, D. (2007) *National Responsibility and Global Justice*. Oxford: Oxford University Press, p.14. David Miller believes that explaining social justice through equality is not helpful and he recommends a contextual approach: the principle of just distribution depends on the type of community one is a member of. I argue that equality is essential in understanding social justice, but it needs to be specified that

that the equality at stake is one than has to obtain between two social groups where one group is in a position to oppress the other.

¹⁵ Ibid., p. 8.

¹⁶ Ibid., p.9.

¹⁷ There are three types of such policies. The first is to give the powerless protection against the resources of the powerful and the examples are the non-voluntaristic use of law and the criminal justice system. The second is to regulate the use that the powerful make of their resources. Familiar institutions promoting these policies include regular elections, separation of powers, rotation of office, trade unions, regulations against monopoly power etc. The third is to give the powerless new empowering resources of their own – and these refer to the welfare state initiatives. These three policies indicate clearly that Pettit takes an institutional approach to resolving the social injustices that cause deprivation of freedom. Pettit (n. 13), pp. 589-90.

¹⁸ It receives more attention in the discussions of communitarians and feminists, as well as of moral philosophers generally as opposed to political philosophers.

¹⁹ See Green's discussion about the instances in which the state should interfere with the 'outward' actions irrespective of the agent's motivation. Green, T.H. (1986) *Lectures on the Principles of Political Obligation*, in P. Harris and J. Morrow (eds), *Lectures on the Principles of Political Obligation and Other Writings*. Cambridge: Cambridge University Press, p. 20. Hereafter *Lectures*. I owe this clarification to the comments of one of the reviewers of this paper.

²⁰ Tyler, C. (2006) 'Contesting the Common Good: T. H. Green and Contemporary Republicanism' in Dimova-Cookson, M. and Mander, W. J. (eds). *T. H. Green Ethics*,

Metaphysics and Political Philosophy. Oxford: Oxford University Press, pp. 262-91, p.291.

²¹ Geoffrey Thomas views Green's 'moral psychology' as an important aspect of his moral theory and dedicates chapters 3 and 4 of his book to it. See Thomas, G. (1987) *The Moral Philosophy of T. H. Green*. Oxford, Clarendon press, pp. 74, 99, 122, 150, 242.

²² See Dimova-Cookson, M. (2001) *T.H. Green's Moral and Political Philosophy. A Phenomenological Perspective*. Basingstoke: Palgrave, Chapter 2.

²³ See Gaus (n. 5).

²⁴ Sections 211, 212, 213 and 217. Green, T. H. (1890) *Prolegomena to Ethics*. Oxford: Clarendon Press.

²⁵ Martin, R. (1993) *A System of Rights*. Oxford: Clarendon Press, Chapters 3, 4, 6 and 8; Boucher, D. (2001) 'British Idealism and the Human Rights Culture', *History of European Ideas*, 27, pp. 61-78.

²⁶ Bosanquet, (n. 7).

²⁷ Reference is made to statements of the *Morning Post* from April 1915, regarding 'the real aim of the minors'. Ibid., p. 191.

²⁸ Ibid., p. 195.

²⁹ Ibid., p.198.

³⁰ Bosanquet's lecture 'The world of claims and counter claim' throws light on the place of 'claims' in his overall philosophy of the nature of human agency. Bosanquet, B. (1913) *The Value and Destiny of the Individual. The Gifford Lectures for 1912*. London: Macmillan, pp. 131-159.

³¹ Bosanquet, (n. 7) pp. 205-206.

³² Boucher, (n. 2), p.80.

³³ Green (n. 24), pp. 213, 217.

³⁴ Ibid., p. 220.

³⁵ Bosanquet's distinction between 'ideal' justice and 'common' justice parallels Aristotle's distinction between 'universal' justice and 'particular' justice where the first represents the ultimate virtue we could have ('the sovereign virtue') while the second looks at what is due to specific individuals. Particular justice is only a part of universal justice as the former 'is actuated by the pleasure that the advantage offers' while 'universal justice has the same field of action as the good man'. Aristotle, (2004) *The Nicomachean Ethics*, Penguin books, pp. 115, 117.

³⁶ Bosanquet, (n. 7), p.208.

³⁷ Ibid., p. 198.

³⁸ See Green's discussion of the impossibility of overexploited workers to become contributors to the common good in his 'Lecture on "Liberal Legislation and Freedom of Contract"' in P. Harris and J. Morrow (eds), *Lectures on the Principles of Political Obligation and Other Writings*. Cambridge: Cambridge University Press, pp.194-219, p 201.

³⁹ Bosanquet, (n. 7), p.210.

⁴⁰ See, for example John Skorupski's discussion of Green in Skorupski, J. (1993) *English-Language Philosophy 1750-1945*. Oxford: Oxford University Press, pp. 75-128.

⁴¹ Martin, R. (2001) 'T. H. Green on individual rights and the common good' in Simhony, A. and Weinstein, D. (eds) *The New Liberalism. Reconciling Liberty with Community*. Cambridge: Cambridge University Press, pp.49-68; Boucher, D. (n.23).

⁴² For a comprehensive discussion of Green's theory of rights see Nicholson, P. (n. 10), Study III, Section I. See also Simhony, A. (2003) 'T.H.Green's community of

rights: an essay on the complexity of liberalism', *Journal of Political Ideologies*, 8 (3) pp. 269-87, and Tyler, C. (1997) *Thomas Hill Green (1836-1882) and the Philosophical Foundations of Politics*. Lampeter: The Edwin Mellen Press, Chapter 5.

⁴³ Green, (n. 19). In his discussion of Spinoza Green argues that the 'true conception of "right" depends on the conception of the individual as being what he really is in virtue of a function which he has to fulfil relatively to a certain end, that end being the common well being of a society'. p. 36.

⁴⁴ Ibid., p. 109. It is important to point out that this statement is made in the context of discussing slaves' rights – therefore rights *are* in conflict with the laws of the state. Green's position is more accurately represented by the statement that rights *may be* in conflict with the laws of the state. I owe this clarification to Peter Nicholson.

⁴⁵ Ibid., p. 112.

⁴⁶ Reference concealed.

⁴⁷ Another reason why this aspect of Green's rights theory has usually been overlooked is the general assumption, to a large extent shared by Green, that rights are given to the individual by society. Yet parallel to this there is another observation, also prominent in the *Lectures*, that it is actually individuals who recognise rights to each other. Once we are aware of this, we can see the way in which rights are products of moral transactions. It is more natural to associate individuals with moral agency than society as a whole.

⁴⁸ Green, (n. 19) pp.26-7, emphasis added.

⁴⁹ Peter Nicholson has pointed out to me that the language of 'priority' may be inappropriate to the extent that, for Green, both a claimant/recipient and a recogniser/ascriber are equally significant. However, there is a pragmatic and a moral reason for ascribing 'priority' of the latter. Pragmatically, he is the one who does the

recognition, and he is ‘morally’ superior to the extent that he is engaged in moral action while the recipient is not. It is important however to view the statement about the ‘priority’ of the rights recogniser as a stage in an argument that ultimately demonstrates how, for Green, rights are ends in themselves.

⁵⁰ Reference concealed.

⁵¹ Green, (n. 19) p.110.

⁵² For Bosanquet the ‘individualistic’ nature of justice did not tally well with the spirit of the public good. Overall, Bosanquet would have had difficulties claiming that serving individuals amounts to serving the community as a whole. Green is admittedly different in this respect. Avital Simhony has commented on the ‘distributive’ nature of Green’s common good: on the fact that for Green the good of the community amounts to the good of each individual. Simhony, A. (2001) ‘T. H. Green’s complex common good: between liberalism and communitarianism’ in Simhony, A. and Weinstein, D. (eds) *The New Liberalism. Reconciling Liberty and Community*. Cambridge: Cambridge University Press, pp. 69-91, p.73. See also Dimova-Cookson (2000) ‘T. H. Green and Justifying Human Rights’ *Collingwood and British Idealism Studies*, 7, pp. 97-115, pp.104-5, pp. 107-10.

⁵³ Green, (n. 19) p. 82.

⁵⁴ Ibid., p.159.

⁵⁵ Ibid., p.79.

⁵⁶ John Horton has pointed out to me that many contemporary theories of rights see rights as instrumental – such as ‘benefit’ or ‘interest’ theories of rights. So my emphasis here is on Rawls’ theory where rights are not instrumental.

⁵⁷ See the discussion of the British idealist moral philosophy in section 2.

⁵⁸ In section 25 of the *Lectures* (n. 19), p. 26, Green explains that those who have their rights recognised do not necessarily contribute to the common good, but they could if they wanted to. In this sense the ‘conditionality’ of rights to contributions to the common good cannot be understood as an ‘imposition’ but as an ‘expectation’ or a ‘guideline’.

⁵⁹ This question was raised by one of the reviewers of the paper.

⁶⁰ Bosanquet discusses the claims of the working class for justice, And Green discusses the rights of slaves, for example.

⁶¹ Richard Rorty expresses a similar point of view in ‘Human Rights, Rationality and Sentimentality’ in Shute, S. and Hurley, S. (eds) (1993) *On Human Rights. The Oxford Amnesty Lectures 1993*. New York: basic Books, pp. 111-134.

⁶² Green, (n.19) p. 108.

⁶³ Green, (n. 24) Book 3, Chapter 3.

⁶⁴ *Ibid.*, pp. 219, 222.

⁶⁵ *Ibid.*, p. 220.

⁶⁶ Green, (n.19) p.109.

⁶⁷ Richter, M. (1964) *The Politics of Conscience. T. H. Green and His Age*. London: Weidenfeld and Nicolson, p. 291.

⁶⁸ See Green, (n. 38).

⁶⁹ For a discussion about the way in which Green’s positive concept of freedom outlines the specific duties of the employers and landlords see Dimova-Cookson, M. (2003) ‘A new scheme of positive and negative freedom: re-constructing T. H. Green on freedom’, *Political Theory* 31 (4), pp. 508-32.

⁷⁰ Not all commentators on Green would agree with this position: it is based on a specific interpretation of Green and makes the case that such interpretation is both

helpful to us and loyal to the spirit of the British idealist moral philosophy. It could be argued that Avital Simhony's position differs from mine. She claims that 'Positive rights are not about dependence of one group of persons (worse off) on another (well off). Positive rights are about mutual dependence of all members.' Her subsequent statement throws clarity and reveals the closeness in our positions: 'The well off recognize that their obligation to help the needy, as expressed in legislation securing positive rights, is grounded in effective equal rights for all, and acknowledges that society ... is essential to the equal rights of all, including themselves'. Simhony, (n. 42), p. 282.

⁷¹ Green (n. 19), p. 112. The logic underpinning this claim, that morality cannot be enforced by the state or by law was fully shared by Bosanquet. See Nicholson, P. (n. 10), p. 213, and Bosanquet, (n. 10).

⁷² This approach is well expressed in the opening lines of *A Theory of Justice*: 'Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interest.' Rawls, (n. 6), pp.3-4.